

ORIGINAL



0000118365

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2010 SEP 24 P 2:30

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF:

FIVE STAR TREE SERVICE AND
LANDSCAPES, LLC, an Arizona limited
liability company, aka FIVE STAR TREE
SERVICE,

RICHARD MCCULLUM, JR., a married man,

LEAH ATWOOD, a married woman,

Respondents.

DOCKET NO. S-20715A-09-0564

Arizona Corporation Commission

DOCKETED

SEP 24 2010

DOCKETED BY

SIXTH

PROCEDURAL ORDER
(Vacates Hearing)

BY THE COMMISSION:

On December 17, 2009, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and Notice of Opportunity for Hearing ("Notice") against Five Star Tree Service and Landscapes, LLC ("FSTL"), Richard McCullum, Jr. and Leah Atwood, husband and wife (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of investment contracts.

The Respondents were duly served with a copy of the Notice.

On February 16, 2010, a request for hearing was filed by Respondents Leah Atwood and FSTL. Respondents also requested that an attorney be appointed to represent them.

On February 17, 2010, by Procedural Order, a pre-hearing conference was scheduled on March 30, 2010, and Respondents advised that since this is an administrative proceeding and not a criminal proceeding, Respondents did not have a right to the appointment of counsel pursuant to the Arizona Rules of Criminal Procedure. Respondents were further advised that they could either retain counsel or they could represent themselves pursuant to the Commission's Rules of Practice and

1 Procedure A.A.C. R14-3-101 *et seq.* and the Rules of the Arizona Supreme Court.

2 On March 30, 2010, at the pre-hearing conference, the Division appeared with counsel and
3 Respondent, Leah Atwood, appeared on her own behalf. The Division presented a request from
4 hearing by Respondent McCullum, which the Division indicated would be filed after the initial pre-
5 hearing conference. The Division requested that a hearing also be scheduled.

6 On March 31, 2010, by Procedural Order, a hearing was scheduled on June 29 and 30, 2010.

7 On June 23, 2010, by Procedural Order, due to a conflict with the Commission's Open
8 Meeting scheduled on June 29 and 30, 2010, the hearing was continued to September 28 and 29,
9 2010.

10 On August 3, 2010, the Division filed an Amended T.O. and Notice to make a minor change
11 to the caption in the proceeding and made several minor changes to the pleading.

12 On August 4, 2010, by Procedural Order, leave was granted to the Division to file its
13 Amended T.O. and Notice. Due to the minor nature of the Division's amendment, it was not
14 necessary for Respondents to file additional requests for hearing or Answers which had been
15 previously filed and the hearing was to be held as previously ordered.

16 On September 2, 2010, due to a scheduling conflict, by Procedural Order, the hearing was
17 rescheduled to commence on September 27, 2010.

18 On September 24, 2010, the Division filed a Motion to Vacate the hearing because the parties
19 had reached a settlement and a Consent Order will be submitted for Commission approval at the
20 October 7, 2010 Open Meeting.

21 Accordingly, the hearing should be vacated.

22 IT IS THEREFORE ORDERED that the **hearing** scheduled to commence on September 27,
23 2010, **is hereby vacated.**

24 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized
25 Communications) applies to this proceeding as the matter is now set for public hearing.

26 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
27 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
28 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances

1 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
2 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
3 Administrative Law Judge or the Commission.

4 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
5 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
6 *pro hac vice*.

7 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,
8 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
9 ruling at hearing.

10 DATED this 24th day of September, 2010.

11
12
13 
14 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

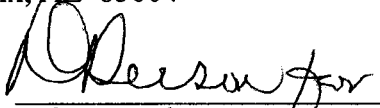
15 Copies of the foregoing mailed/delivered
16 this 24th day of September, 2010 to:

17 Leah Atwood
18 5746 South Estrella Road, No. 2
19 Gold Canyon, AZ 85118

20 Richard McCullum, Jr.
21 5703 Laurel Canyon Blvd., #304
22 Valley Village, CA 91607

23 Matt Neubert, Director
24 Securities Division
25 ARIZONA CORPORATION COMMISSION
26 1300 West Washington Street
27 Phoenix, AZ 85007

28 ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004

By: 
Debra Broyles
Secretary to Marc E. Stern